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That decision is an authority for saying that the Magistrate was right in the view that he took of the law. We agree with the decision, and we think that the offence of selling wine by retail, with a wholesale license, is an offence like to the offence of selling wine without a license at all; it is equally the offence of selling wine without having a license so to sell it.

It remains only to consider the question of punishment. We do not think that under the circumstances there is anything excessive in the punishment.

In the result we dismiss the appeal and decline to interfere.

H. T. H. *Appeal dismissed.*

ORIGINAL CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Pigot.

1889
August 15.

BANK OF BENGAL (PLAINTIFF) *v.* KARTICK CHUNDER ROY AND OTHERS (DEFENDANTS).*

Decree—Form of decree—Suit on Bill of Exchange—Civil Procedure Code (Act XIV of 1882), ss. 532, 538—Negotiable Instruments (Act XXVI of 1881), s. 35.

A plaintiff suing on a bill of exchange the drawer, acceptor, and endorser, where the endorsement has been made before maturity and without restriction, is entitled to a decree against all three defendants; a decree containing a condition exempting the endorser from liability until the plaintiff has exhausted his remedies against the drawer and acceptor is therefore illegal.

THIS was a suit under Chapter XXXIX of the Code of Civil Procedure, brought by the Bank of Bengal against Kartick Chunder Roy, the acceptor, Gocool Chunder Mullick, the drawer, and Paul J. Valetta, the endorser, of a bill of exchange for Rs. 5,000, payable ninety days after sight. The defendants obtained no leave to defend.

The facts were that, on the 30th June 1888, Gocool Chunder Roy drew a bill of exchange for Rs. 5,000, ninety days after sight, on Kartick Chunder Roy. This bill was, on the 2nd July 1888, accepted by Kartick Chunder Roy, and was endorsed over before

* Original Civil Appeal No. 9 of 1889, against the decree of Mr. Justice Norris, dated the 18th of February 1889.

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maturity and without restriction by Paul J. Valetta to the Bank of Bengal. On the 4th October 1888, the bill was presented to Kartick Chunder Roy, but was dishonoured. The Bank thereupon gave notice of dishonor to the other two defendants, and, on the 10th October 1888, the defendant Gocool Chunder Roy paid to the Bank Rs. 1,000. No further payments being made, the Bank brought this suit against the three defendants above-named for Rs. 4,000, with interest together with costs of noting and presentment.

Mr. *Handley*, for the plaintiff Bank, the defendants not having obtained leave to appear and defend, asked for a decree for the amount due as against all the defendants, citing s. 35 of the Negotiable Instruments Act of 1881.

Norris, J., gave a decree for the sum of Rs. 4,000 with interest at 6 per cent. from the date of dishonour to the date of decree, and Rs. 19 for notorial charges, costs on Scale 1 ; but he directed that execution should not issue against the endorser until the plaintiff Bank had exhausted their remedy against the drawer and acceptor.

The plaintiff Bank appealed against so much of the decree of Mr. Justice Norris as restricted their remedy against the endorser.

Mr. *Phillips* for the appellant.

The judgment of the Court (PETHERAM, C. J. and PIGOT, J.) was delivered by

PETHERAM, C.J.—This is a suit by the plaintiffs, the holders of a bill of exchange, against three persons (the drawer, the acceptor, and endorser) under the Negotiable Instruments Act (Act XXVI of 1881. Section 35 of that Act provides that, in the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity without in such endorsement expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, and the Code of Civil Procedure provides that the holder of a bill of exchange may sue all the parties to it in one action. This has been done, and there is no question that the parties are all equally liable to the plaintiffs. The learned Judge has given judgment against all

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three, but he has made it a condition of the judgment that no execution is to issue against the endorser until the holder has exhausted his remedies against the drawer and acceptor. We are unable to agree with the learned Judge that he had power to place such a condition upon the holder in this case. The law entitles the holder of a bill of exchange to sue all the parties in one action or in separate actions; and, having brought his suit, the judgments are practically separate, and may be enforced against each or all of the parties. We think then that the Judge was wrong in imposing this condition, and this appeal to amend the decree by striking out that condition must be decreed, but without costs. *Appeal allowed.*

Attorneys for the Appellants: Messrs. *Morgan & Co.*

T. A. P.

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Gordon.

1889
June 25.

JONARDON MUNDUL DAKNA AND ANOTHER (PLAINTIFFS) *v.* SAMBHU NATH MUNDUL AND OTHERS (DEFENDANTS). *

Arbitration—Award on one point only—Remission to arbitrator—Refusal by Arbitrator to act—Limitation—Adverse possession.

Several points arising in a suit were referred for decision to an arbitrator. The arbitrator made his return, deciding by the award one only of the points referred to him, *viz.*, that the defendants had been in possession of the land in suit for more than twelve years. The plaintiffs and the defendants claimed under the same landlord.

The Munsiff remitted the award to the arbitrator for determination of the other matters originally referred to him; the arbitrator, however, refused to act further in the matter, and the Munsiff himself took up the case and decided it in favour of the plaintiff. On appeal, the Subordinate Judge held that the award made by the arbitrator was sufficient for the determination of the case, and reversed the decision of the Munsiff, and gave the defendants a decree in terms of the award.

Held, that as the plaintiffs and the defendants claimed under one and the same landlord, and the question between them being which of the two had the better title to the land in dispute, the case could not have been concluded by the finding of the arbitrator upon the question of possession, and that

* Appeal from Appellate Decree No. 1761 of 1888, against the decree of Baboo Parbati Coomar Mitter, Subordinate Judge of Jessore, dated the 7th of August 1888, reversing the decree of Baboo Gopal Kristo Ghose, Munsiff of Narrail, dated the 13th of February 1888.